



March 20, 2001

Mr. Charles M. Allen, II  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2001-1099

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145122.

The City of Richardson Police Department (the "department") received a request for the following information:

- 1) All documents pertaining to any type of investigation initiated since the last day of 1998, of allegations that the Richardson Chief of Police imposed a red light violation citation quota system upon officers of the Richardson Police Department.
- 2) All notices to appear or citations issued by Richardson Police Officers charging a person with an offense under Texas Penal Code section 38.02 (Failure to ID) during the three-month period beginning on September 1, 2000 and ending on November 30, 2000.

You claim that the investigative file is excepted from disclosure under section 552.108 of the Government Code. You have not raised any exceptions for the second part of the request. Therefore, we assume that, to the extent this information exists, it has been released to the requestor. If not, you must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000). As for the first part of the request, we have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Here, the department conducted an internal investigation into allegations that a "Red Light Citation Quota" was employed by supervisors of the department to evaluate, promote, or compensate peace officers, which, if determined to be true, would have been a misdemeanor. *See* Transp. Code § 720.002 (citing Loc. Gov't Code § 86.011). Thus, in this instance, the department's internal investigation constituted the investigation of criminal conduct. *But see Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment), Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer). We understand you to assert that the criminal investigation concluded in a result other than conviction or deferred adjudication. Therefore, you may withhold the entire investigation file under section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 145122

Encl. Submitted documents

cc: Mr. Fred Slice  
2406 Diamond Oaks  
Dallas, Texas 75044  
(w/o enclosures)